

Internal Revenue Service

memorandum

CC:TL-N-5065-89

RJFitzpatrick

date: APR 07 1989

to: District Counsel, Nashville CC:NAS
Attn: Ms. Seals

from: Assistant Chief Counsel (Tax Litigation) CC:TL

subject: [REDACTED]

This is in response to your March 22, 1989 request for Tax Litigation Advice. The notice of deficiency in this case involves the [REDACTED] tax year and was sent on [REDACTED]. The amount at issue is approximately \$[REDACTED].

It is our understanding that the administrative files for [REDACTED], [REDACTED], [REDACTED], and [REDACTED] have been lost and you have been unable to verify through our records the address used by petitioners on their most recently filed return. However, petitioners have now provided you with a copy of the most recently filed return ([REDACTED]) prior to the Service's issuance of the notice of deficiency in this case and it supports the petitioners' claim that the notice was not sent to their last known address. Correspondence in the Service's collection file for [REDACTED] and other years have verified that the Service did utilize this address in communicating with the petitioners before and after the issuance of the notice of deficiency in this case. This address apparently has been utilized by the petitioners since mid-[REDACTED] and it appears the petitioners notified the Service of their new address even before filing their [REDACTED] income tax return. In any event, it is clear that either the petitioners' notification of a change of address was not properly processed and updated into the Service's computer or an address check was not undertaken when the notice of deficiency was prepared.

We agree with your view that in light of Abeles v. Commissioner, 91 T.C. 1019 (1988), it appears that the notice of deficiency in this case was not sent to the petitioners' last known address and the appropriate course of action is to move for dismissal. Although without the petitioners' administrative files we are at a significant disadvantage in making a determination that the notice of deficiency was not mailed to the petitioners' last known address, there is sufficient evidence to justify concession at this time and is appropriate so as to limit the possibility of an award of attorney fees.

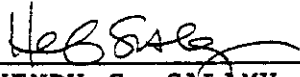
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As discussed with Ms. Seals of your office and Mr. Fitzpatrick, Branch No. 4, the appropriate course of action is to file a Motion to Dismiss for Lack of Jurisdiction upon the grounds that a notice of deficiency was not issued as prescribed by I.R.C. § 6212(b)(1).

If you have any questions concerning this Tax Litigation Advice, please contact Robert J. Fitzpatrick at FTS 566-3345

MARLENE GROSS
Assistant Chief Counsel
(Tax Litigation)

By:


HENRY G. SALAMY
Chief, Branch No. 4
Tax Litigation Division

Attachment:
collection file (1)
duplicate legal file (1)